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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/853,428 | 05/10/2001 | George Brainard | BRA01-NP002 | 6772 |

7590

11/07/2003

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EXAMINER

GIBSON, ROY DEAN

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 11/07/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/853,428

Applicant(s)

BRAINARD, GEORGE

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5,6,11-15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-3,5,6,11-15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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Formal Matters

The examiner overlooked the amendment attached to the petition filed on July 9, 2003, which was not granted. Therefore, when the new petition filed on Sep. 24, 2003 was granted, the examiner merely mailed a copy of the previous Office action of May 31, 2003. The instant Office action replaces this copy and restarts the time response. Currently claims 1-3, 5, 6, 11-15 and 17 are pending.

Claim Objections

Claim 15 is objected to because of the following informalities: "material" in line 5 is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-3, 5, 6 and 11-15 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Narrowing of the range of the peak sensitivity from 425 – 505 nm to 435 – 488 nm is new matter and a change in scope of

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the invention which is not supported by the specification, i.e., this narrower range must have been recited and its critically disclosed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 5, 6, 11-15 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerdt (6,235,046).

As to claims 1, 2, 5 and 11-14 Gerdt discloses a system for and a method of treating a light responsive disorder (SAD and other problems associated with circadian rhythms) comprising administration of a therapeutically effective amount of light generated by a light system, wherein the light system emits a balance of wavelengths to stimulate a circadian system of a mammal the balance of wavelengths having a peak sensitivity from about 445 to approximately 500 nm (end of the blue light, which overlaps the range of 435 – 488 nm) by applying a notch filter [which can be transparent or translucent depending upon the thickness of the coating material(s)] that blocks 430 – 440 nm or 10 nm centered about 435 nm (col. 3, lines 18-28, col. 4, lines 30-49, col. 7, lines 13-56, and col. 9, lines 22-42).

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As to claims 3, 6, 15 and 17, Gerdt discloses a system for and a method of minimizing circadian and neuroendocrine stimulation or disruption in a mammal by the light system excluding emission of wavelengths having a peak sensitivity ranging from about 445 – approximately 500 nm (which overlaps 435 - 488 nm and col. 9, lines 22-42).

Claims 1-3, 5, 6, 11-15 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Teicher et al. (6,554,439)

As to claims 1, 2, 5 and 11-14, Teicher et al. discloses a system for and a method of treating a light responsive disorder (SAD and other problems associated with circadian rhythms) comprising administration of a therapeutically effective amount of light generated by a light system, wherein the light system emits a balance of wavelengths to stimulate a circadian system of a mammal the balance of wavelengths having a peak sensitivity from about 470 – 500 nm (which overlaps the range of 435 – 488 nm) by applying a blue filter [which can be transparent or translucent depending upon the thickness of the coating material(s) and col. 2, lines 24-34, col. 2, lines 34-60, col. 3, lines 15-41, col. 3, line 60-col. 4, line 4 and col. 4, lines 33-56].

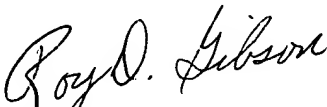
As to claims 3, 6, 15 and 17, Teicher et al. discloses a system for and a method of minimizing circadian and neuroendocrine stimulation or disruption in a mammal by the light system excluding emission of wavelengths having a peak sensitivity ranging from about 470 - 500 nm (which overlaps 435 - 488 nm and col. 3, lines 37-41).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 703-308-3520. The examiner can normally be reached on M-F, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 703-308-0994. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.


Roy D. Gibson
Primary Examiner
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October 31, 2003